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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,838	02/18/2004	Floyd Backes	160-040	3757
34845 7590 12/13/2007 McGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			EXAMINER NGO, NGUYEN HOANG	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/780,838

Applicant(s)

BACKES, FLOYD

Examiner

Nguyen Ngo

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

This communication is in response to the amendment of 9/24/2007. All changes made to the Specification, and Claims have been entered. Accordingly, Claims 1-3 are currently pending in the application.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiohara et al. (US 2003/0236064), in view of Liang (US 2003/0083095), hereinafter referred to as Shiohara and Liang.

**Regarding claim 1**, Shihara discloses a program product for use by an access point in a wireless

communications environment wherein multiple channels are available for communication (figure 1 and figure 2 and figure 6), the program product comprising computer readable medium having embodied therein a computer program for storing data, the computer program comprising:

logic that selects a channel on which to provide service to at least one wireless device by (channel setting module 102 of access point 10 shown in figure 1, page 5 [0089]-[0090]):

logic for sending at least one message indicative of a claim to the selected channel (uses channel set by the channel setting module 102 to transmit and receive signals via the antenna, page 5 [0090]);

logic operative such that if no message indicative of a claim to the selected channel is received from another device, commencing operation on the selected channel (determines that there is no conflict of the channel, page 6 [0100]); and

if a message indicative of a claim to the selected channel is received from another device, thereby indicating conflict, resolving the conflict by at least one of:

selecting a different channel on which to provide service, and reducing transmission power (conflict avoidance module 105 that determines whether or not the preset channel is to be switched over, page 5 [0093]);

Shiohara however fails to specifically disclose the specifics of how the wireless devices as seen in figure 2 connect with the access points of figure 2. Shiohara however discloses the concept of wireless LANs where multiple computers and devices like printers are connected wirelessly via radio waves (page 1 [0004]-[0009]) and further discloses of having more than one access point with overlapping coverage areas and a subnet of devices connected to a specific

access point (correlating to selecting a subset of wireless devices, page 5 [0096]-[0097] and figure 2). In a similar field of endeavor, Liang further discloses;

logic that determines which wireless devices become associated with the access point by periodically (page 6 [0070]):

logic for sending a message to wireless devices to indicate the presence and its protocol capability of the access point (poll frame from the 802.11 access point, page 6 [0070]);

logic for receiving from wireless devices, messages indicative of requests to become associated with the access point (send a reservation request to the CU 510, page 6 [0070]);

logic for selecting a subset of the wireless devices from which a message was received indicative of a request to become associated with the access point, thereby rejecting some of the requests to become associated (if the request has not been granted, the wireless station cannot transmit, page 6 [0071]); and

logic for sending a message to each selected wireless device to indicate that the access point will allow the selected device to communicate in the wireless communications environment via the access point (if the request has been granted, the wireless station can transmit, page 6 [0071]).

Thus it would have been obvious to incorporate the well known concept of connecting a wireless device to a specific access point through use of polling, request and acceptance messages as disclosed by Liang into the technique of controlling a communication channel to ensure smooth communication in a wireless communication device as disclosed by Shiohara in order to correctly and efficiently connect specific devices to a specific access point (as seen from figure 2).

**Regarding claim 2**, the combination of Shiohara and Liang, more specifically Liang disclose the program product of claim 1 further comprising:

logic for receiving a registration request message from a wireless device, wherein the wireless device sends the registration request message to the access point to indicate that the device desires to communicate in the wireless communications environment via the access point using a particular protocol; and

logic for sending a registration acknowledge message to the wireless device which sent the registration request message, wherein the access point sends the registration acknowledge message to indicate that the access point understands that the device will communicate in the wireless communications environment using the particular protocol (page 6 [069]-[0074]).

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shiohara et al. (US 2003/0236064), in view of Liang (US 2003/0083095), in further view of Feder et al. (US 6522881), hereinafter referred to as Shiohara, Liang, and Feder.

**Regarding claim 3**, the combination of Shiohara and Liang fails to disclose choosing the access point that will provide better wireless communications performance than the current access point.

Feder however discloses a method for use in a wireless communications network that searches for the best serving access point of a base station as a function of communication quality. Each base station 200 includes five access points (AP) that are assigned a different 1MHz channel, (devices in a wireless communications environment wherein multiple channels are available for communication, abstract, column 4 lines 6-11). A wireless modem 270 in a fixed wireless network executes an AP search/selection sequence in response to a triggering event, such as when service quality degrades below a threshold level. After detecting beacons and obtaining a communication link quality metric for each neighboring access point, the wireless modem selects the best access point based on the communication link quality metric ( message indicative of a request to become associated with the access point is sent by a wireless device to the access point if the device ascertains that the access point is likely to provide better wireless communications performance than another access point through which the device is currently communicating, column 2 lines 59-63, column 3 lines 6-10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to select an access point with the best communication link quality as taught by Feder into the method of Shiohara, as modified by Liang, in order to efficiently complete a transition or handover.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Dore et al. (US 20050190730), Method Of Creation Of A New Communication Network By A Wireless Terminal And Terminal Implementing Method.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen Ngo whose telephone number is (571)272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571)272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

\*\*\* MN

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**PRIMARY EXAMINER**